

REMARKS

Claims 1-33 and 35-38 were pending. All were rejected. The Applicants have cancelled claims 1-7 and amended claims 8 and 9. Therefore, claims 8-33 and 35-38 are presently pending. The Applicants request further consideration and re-examination in view of the amendments above and remarks set forth below.

Interview Summary

Examiner Brian A. Zimmerman and the undersigned discussed claims 8, 9, 30 and 38 by telephone on August 2, 2004. During this conversation, Examiner Zimmerman indicated that: claim 9 would likely be allowed if written in independent form; claim 30 would likely be allowed upon further consideration of the term "normal activities"; and claim 38 would likely be allowed upon further consideration of claim 38 in view of Freedman (U.S. Patent No. 6,259,805). Regarding the objection to claim 34, the undersigned pointed out that claim 34 was previously cancelled.

Rejection of Claim 8 in view of Borza

Claim 8 stands rejected in view of Borza. The Applicants have amended claim 8 to include the limitation of claim 9. Borza does not suggest or disclose the limitation of claim 9. Accordingly, amended claim 8 is allowable.

The Applicants have amended claim 9 to recite that the step of accessing comprises the person pressing a button on the portable device. This limitation is supported by the Applicant's specification at least at page 11, line 31 to page 12, line 11 and at page 14, lines 11-15.

Rejection of Claim 30 in view of Borza

Claim 30 stands rejected in view of Borza. The final rejection indicates that the term "normal activities" was interpreted to include the authentication process of Borza.

The Applicants respectfully traverse the rejection. The term "normal activities" as used in claim 30 must be interpreted in light of the Applicants' specification. The Applicants' specification at page 13, lines 12-17, explains that:

[S]amples may be taken over an extended period of time during which the user goes about his or her normal activities. For example, image samples may be taken when the wearer uses the device 100 to display time of day. In addition, voice samples may be taken during the normal course of the wearer speaking to others. For example, the user may speak his or her name when answering the telephone or making introductions to others.

(Emphasis added.) None of the examples given are of a person attempting to engage in authenticating themselves. Thus, from this passage and from the specification taken as a whole, it is clear that the type of activities that are considered "normal activities" in the context of claim 30 does not include a person attempting to authenticate themselves. As is stated in the Manual of Patent Examining Procedure, Section 2111, the "PTO applies to verbiage of the proposed claims the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in the applicant's specification." (Emphasis Added), quoting *In re Morris*, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997).

Borza does not disclose the limitation of claim 30 in which samples are collected while the user goes about activities other than the user attempting to authenticate themselves. Accordingly, claim 30 is allowable.

Rejection of Claim 38 in view of Freedman

Claim 38 stands rejected in view of Freedman. The final rejection indicates that Freedman at col. 3, lines 43-52, was interpreted as teaching adding additional data to the baseline when comparison is indicative of a substantial match.

The Applicants respectfully traverse the rejection. Claim 38 is directed to an embodiment of the invention in which the baseline profile is automatically updated such that it can evolve over time. Freedman does not suggest or disclose such a feature.

Rather, the passage of Freedman at col. 3, lines 43-52, is in fact directed to an aspect of Freedman in which samples are identified from individuals other than the person whose identity is being authenticated and that are indicative of potential false matches. Note that the passage at col. 3, lines 43-52 is substantially the same as the language of claim 11 of Freedman. However, the passage at col. 3 is missing certain

portions, which makes the meaning of the passage at col. 3 less clear. Specifically, the phrase "second data within the biometric data" at col. 3, lines 45-46, appears as "second data related to another individual within the biometric data" in claim 11. Thus, from claim 11 of Freedman, it is clear that the "first data" mentioned at col. 3, lines 43-52, is biometric information of a first individual, whereas, the "second data" mentioned at col. 3, lines 43-52 is biometric information of "another individual" indicative of a "potential false acceptance."

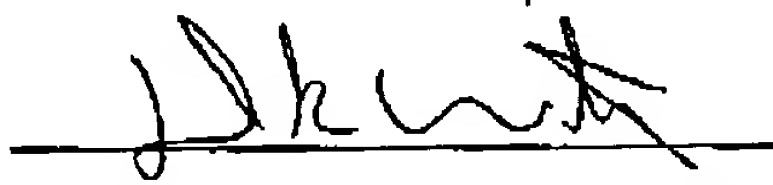
Accordingly, Freedman, and particularly, the passage of Freedman at col. 3, lines 43-52, does not suggest or disclose the features of the Applicants' claim 38. Therefore, claim 38 is allowable.

Conclusion:

In view of the above, the Applicants submit that all of the pending claims are now allowable. Allowance at an early date would be greatly appreciated. Should any outstanding issues remain, the examiner is encouraged to contact the undersigned at (408) 293-9000 so that any such issues can be expeditiously resolved.

Respectfully Submitted,

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